

REMARKS

The Examiner's cooperation in meeting with the applicants' representatives on July 13, 2004 is greatly appreciated. Applicants have amended the present claims in view of the Examiner's comments and suggestions regarding this application, and it is believed that this application is now in condition for allowance.

With the entry of the present Amendment, Claims 1-18, 26-42, 46-49, 51-56 and 58 are pending in this application. Claim 58 has been amended to properly depend from Claim 54, thus obviating the Examiner's indefiniteness rejection under 35 U.S.C. §112, ¶2. Claims 1, 26 and 54 have been amended to more clearly define the present invention. No new matter has been added.

Claims 1-12, 26-33, 36-44 and 46-48 stand rejected under 35 U.S.C. § 103 as obvious over U.S. 6,456,720 to Brimhall *et al.* ("Brimhall"). Claims 54-56 stand rejected under 35 U.S.C. § 103 as obvious over U.S. 5,970,157 to Yoest ("Yoest"). For the following reasons, it is believed the Examiner's rejections are overcome, and the present claims should be allowed.

A. Rejection of Claims 1-12, 26-33, 36-44 and 46-48 as Obvious over Brimhall

Applicants have amended independent Claims 1 and 26 to recite, *inter alia*, that the battery comprises a "non-rechargeable" battery permanently affixed within the second section of the hearing aid. In the Office Action dated January 23, 2004, the Examiner asserted that it would have been obvious to modify Brimhall to incorporate a permanently-affixed battery, since according to the Examiner, it is well known in the art to permanently provide a battery, such as a Ni-MH rechargeable battery, for a hearing aid. Applicants have amended Claims 1 and 26 to specify that the battery is a non-rechargeable battery. It is respectfully submitted that this amendment places Claims 1 and 26 in condition for allowance.

Even assuming *aguendo* that it would have been obvious to incorporate a rechargeable-type battery into the device discussed in Brimhall, as asserted by the Examiner, it would not have been obvious to provide a *non-rechargeable* battery that is permanently affixed in a device as described in Brimhall. The Brimhall patent contemplates a device in which the battery must be periodically replaced, as evidenced by door 50 on the faceplate 40, which permits access to the

removable battery. (See Fig. 1). In the present invention, by contrast, the non-rechargeable battery is permanently affixed, so that the hearing aid does not require any replacement or recharging of the power source. Once the power is expended from the hearing aid, the entire device may be discarded and replaced.

Since the hearing aids recited in amended Claims 1 and 26 are not taught or suggested by the prior art, it is submitted that these claims and their dependents, Claims 2-12, 27-33, 36-44 and 46-48, are all allowable.

B. Rejection of Claims 54-56 as Obvious over Yoest

Claims 54-56 of the application stand rejected under 35 U.S.C. § 103 as being obvious over U.S. 5,970,157 to Yoest (“Yoest”). Applicants have amended independent Claim 54 to specify that the claimed tip for a hearing aid comprises “a flexible, compliant member comprising at least three materials, a first material having a first durometer and a second material having a second durometer, the first durometer of the first material being less than the second durometer of the second material and a third material having a third durometer which is greater than the durometer on the second material and a receptacle in the third material for containing a hearing aid receiver.”

As described in the Specification at p. 8, lines 6-18, for example, a hearing aid tip 42 of the invention can comprise a flexible, compliant member made of at least three materials, such as a very soft durometer outer mushroom-shaped portion 44, a more stable durometer sound port portion 40, and a still more stable durometer body portion 38. The third material (i.e. body portion 38 in Fig. 1), which would normally be part of the hard shell in a conventional hearing aid, houses the receiver 36, and thus aids in vibration isolation. The use of different durometer materials for the tip provides improved flexibility and comfort while maintaining sufficient support and integrity for the tip.

The tip recited in Claim 54 is not taught or suggested in the cited Yoest reference. The Yoest patent generally relates to a hearing aid device comprising an outer shell with an acoustical output port, and specifically describes barriers which can be press-fit into the output port to provide an earwax barrier. Yoest does not describe a tip which comprises a “flexible, compliant member having at least three materials,” as recited in Claim 54. In Yoest, to the extent that there

is a “tip” as recited in Claim 54, the “tip” is part of the hard “shell” 12 of the hearing aid, which encloses and protects all of the hearing aid components. Yoest does not teach or suggest providing a flexible, compliant tip member comprised of three different materials, each having a different durometer, as is recited in Claim 54.

In the recent Office Action, the Examiner asserts that the “tip” in Yoest includes at least three different materials, including the shell material (12) and the receiver tube material (22). The Examiner further asserts that Figure 2 of Yoest discloses a “filler” material containing the receiver (16), and argues that it would have been obvious to use a higher durometer material, such as an elastic foam material, for filling the shell, to provide desirable engagement for the receiver and reduce undesirable vibrations.

Applicants respectfully disagree that Yoest teaches or suggests the “filler” material as posited by the Examiner. There is no discussion of a “filler” material in the text of the Yoest patent, and applicants believe that the (unlabeled) hatched region shown surrounding the receiver (16) in Figure 2 of Yoest is actually just the interior surface of the shell (12), seen in a partial cutaway view. Furthermore, the use of a high-durometer “filler” material would be inconsistent with other teachings of Yoest, such as the modular device of Fig. 16, in which the shell (1012) is removably connected to a mounting plate (1016) containing the receiver (1018), which would not be possible if there were a high-durometer “filler” surrounding the receiver.

In any event, it is submitted that even if one were to provide a comparatively high-durometer filler material around the receiver in the hearing aid of Yoest, as proposed by the Examiner, this would still not render Claim 54 of the present application obvious. Specifically, Claim 54 recites a tip that includes a “flexible, compliant member comprising at least three materials,” each of the materials characterized by a different durometer, and the third, highest-durometer material containing the receiver. Yoest has a “tip” that is formed from a hard outer shell (12), and fails to teach or suggest a tip comprising a “flexible, compliant member” made from at least three different materials, as presently recited. For these reasons, it is submitted that independent Claim 54 and dependent Claims 55-56 and 58 are all allowable.

Information Disclosure Statement

An Information Disclosure Statement (IDS) is being filed concurrently herewith. Entry of the IDS is respectfully requested.

CONCLUSION

In view of the above amendments and remarks, it is believed that all claims are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned.

Respectfully submitted,

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